

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BOBBY ALLEN BRYANT,)	Case No. CV 12-6252-GW (DTB)
)	
Petitioner,)	
vs.)	AMENDED ORDER SUMMARILY
)	DISMISSING PETITION FOR WRIT OF
LINDA T. McGREW, Warden,)	HABEAS CORPUS FOR LACK OF
)	SUBJECT MATTER JURISDICTION
Respondent.)	
)	

On July 20, 2012, petitioner, a federal prisoner currently incarcerated at the Federal Correctional Institution Medium II in Adelanto, California, filed a Petition for Writ of Habeas Corpus by a Person in Federal Custody (“Pet.”) pursuant to 28 U.S.C. § 2241. It appears from the face of the Petition that it is directed to the same conviction as the prior habeas petition filed by petitioner in this Court on August 3, 2010, in Bryant v. Quintana, No. CV 10-5752-GW (DTB) (“Bryant I”). The Court entered judgment dismissing Bryant I on November 2, 2011, after accepting and adopting the Report and Recommendation (“R&R”) of the Magistrate Judge that the action be dismissed on the grounds that petitioner’s claim had to be brought pursuant to 28 U.S.C. § 2255; that petitioner had failed to make the requisite showing in order to have the petition considered under the “savings clause” of 18 U.S.C. § 2241; and that petitioner had failed to obtain the requisite certification from the Court of Appeals

1 to provide this Court with jurisdiction to consider the petition. (See Bryant I, Docket
 2 No. 10 (R&R) at 3-7.)¹ See also Bryant I, 2011 WL 5322037, at *2-4 (C.D. Cal. Jun.
 3 2, 2011), Report and Recommendation adopted by 2011 WL 5321018 (C.D. Cal. Nov.
 4 2, 2011). In the instant Petition, petitioner challenges the same underlying criminal
 5 conviction as he did in Bryant I, to wit: A 1992 conviction in the United States
 6 District Court for the Southern District of Florida, whereby petitioner was found
 7 guilty by a jury of conspiring to possess cocaine with intent to distribute, using a
 8 firearm during and in relation to a drug trafficking crime, possession of a firearm by
 9 a convicted felon, and partially obliterating the serial number on a firearm. (See
 10 Bryant I, Docket No. 10 at 2.) Petitioner was sentenced to 720 months (60 years)
 11 imprisonment. (Id.) On November 15, 1995, the Eleventh Circuit Court of Appeals
 12 affirmed petitioner's conviction in United States v. Brantley, 68 F.3d 1283 (11th Cir.
 13 1995). (See Bryant I, Docket No. 10 at 2.) On October 10, 1996, petitioner filed a
 14 motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 in the
 15 Southern District of Florida, which was denied on April 15, 1998. (Id.) In Bryant I,
 16 the Court found that petitioner could not establish that he met the "savings clause" or
 17 "escape hatch" of 28 U.S.C. § 2255(e), which would have permitted the Court to
 18 consider his petition pursuant to 28 U.S.C. § 2241. (Id. at 3-5.) Accordingly, the
 19 Court concluded that it did not have jurisdiction to consider the petition pursuant to
 20 28 U.S.C. § 2241, and that jurisdiction under 28 U.S.C. § 2255 would be in the
 21 Southern District of Florida. (Id. at 5-6.) Moreover, as petitioner had previously filed

23 ¹ The Court takes judicial notice of the records in petitioner's prior habeas
 24 action in Bryant I pursuant to Fed. R. Civ. Evid. 201. See United States v. Author
 25 Services, 804 F.2d 1520, 1523 (9th Cir. 1986) ("It is well established that a court may
 26 take judicial notice of its own records." (citing Shuttlesworth v. City of Birmingham,
 27 394 U.S. 147, 157, 89 S. Ct. 935, 22 L. Ed. 2d 162 (1969))), overruled on other
 28 grounds by United States v. Jose, 131 F.3d 1325, 1329 (9th Cir. 1997); see also United
States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248
 (9th Cir. 1992).

1 a motion under 28 U.S.C. § 2255, which had been denied, the current Section 2255
2 motion constituted a “second or successive” motion which could not be considered
3 absent a certification from the appropriate circuit court of appeals, pursuant to 28
4 U.S.C. § 2244. As petitioner had failed to obtain such certification, the Court lacked
5 subject matter jurisdiction to consider the petition in Bryant I. (Id. at 6.) Based on the
6 foregoing, Judgment was entered in Bryant I, dismissing that action without prejudice.
7 Petitioner did not file a notice of appeal from that Judgment.

8 The Petition now pending before the Court suffers from the same procedural
9 infirmities as those which afflicted the petition in Bryant I. Accordingly, for the same
10 reasons enunciated by the Court in Bryant I, the instant Petition must be dismissed.

11 Moreover, as also explained in Bryant I, because petitioner has already filed a
12 Section 2255 motion challenging his underlying criminal conviction, and since that
13 prior 2255 motion was denied on April 15, 1998, the Court must examine the instant
14 Petition as a “second or successive” 2255 motion. “A second or successive motion
15 must be certified as provided in section 2244 by a panel of the appropriate court of
16 appeals to contain” either:

17 (1) newly discovered evidence that, if proven and viewed in light
18 of the evidence as a whole, would be sufficient to establish by clear and
19 convincing evidence that no reasonable factfinder would have found the
20 movant guilty of the offense; or

21 (2) a new rule of constitutional law, made retroactive to cases on
22 collateral review by the Supreme Court, that was previously unavailable.
23

24 28 U.S.C. § 2255(h). As in Bryant I, petitioner has not shown that he has satisfied this
25 gatekeeping requirement by obtaining the requisite certification from the appropriate
26 Court of Appeals. Therefore, since petitioner was not granted the requisite
27 certification to bring a successive motion, this Court lacks jurisdiction to consider the
28 Petition. See United States v. Lopez, 577 F.3d 1053, 1061 (9th Cir. 2009) (“If the

1 petitioner does not first obtain our authorization, the district court lacks jurisdiction
2 to consider the second or successive application.”)

3 For the foregoing reasons, IT IS ORDERED that this action be summarily
4 dismissed with prejudice, pursuant to Rule 4 of the Rules Governing Section 2254
5 Cases in the United States District Courts.

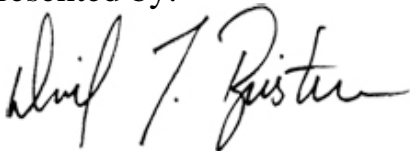
6 LET JUDGMENT BE ENTERED ACCORDINGLY.

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8 DATED: October 10, 2012

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10 

11 GEORGE H. WU
12 UNITED STATES DISTRICT JUDGE

13 Presented by:

14 

15 David T. Bristow
16 United States Magistrate Judge